

**TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD ("BOARD")**

V.

**TOM M. CURRAN
TX-1321290-R ("RESPONDENT")**

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**BEFORE THE TEXAS
APPRAISER LICENSING AND
CERTIFICATION BOARD**

**DOCKET NO.
329-12-7842.ALC**

FINAL ORDER

On this 17th day of May, 2013, the Board considered the above-styled case.

After proper notice was given, the above-styled case was heard by an Administrative Law Judge ("ALJ") at the State Office of Administrative Hearings who made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 4, 2013 ("PFD"). This PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No exceptions were filed by either party.

The Board, after review and due consideration of the PFD, adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD and incorporates those Findings of Fact and Conclusions of Law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied. The Board accepts the recommended sanctions of the ALJ with the following modifications, the suspension is to be fully probated and the timeframe for completion of the mentorship required is changed to be completed in full on or before the end of the one year probated suspension period. The change was made since this was the Respondent's first complaint and the ALJ did not find that Respondent intentionally inflated values in his appraisal reports and so that the Respondent would have the benefit of the mentorship during the probation period.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that the appraisal certification of Tom M. Curran is hereby **SUSPENDED** for a period of one year, effective twenty-one days after the date Tom M. Curran is notified of this Final Order, with that suspension being fully **PROBATED** for that same one year period.

IT IS FURTHER ORDERED that Tom M. Curran is hereby assessed an administrative penalty of \$5,000.00, payable in full on or before twenty-one days after the date Tom M. Curran is notified of this Final Order.

IT IS FURTHER ORDERED that Tom M. Curran complete twenty-eight hour of in-person mentorship conducted by a mentor appointed by the Board on or before the end of the one year probated suspension order herein. Respondent shall submit a Certification of Completion of Mentorship signed by the mentor to the Board for each mentor session on or before the end of the one year probated suspension order herein. Respondent is solely responsible for locating and scheduling an appointed mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this Final Order shall then become effective upon a final determination by said court or appellate court in favor of the Board.

Approved by the Board and signed this 17 day of May, 2013.



Walker R. Beard, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 4, 2013

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA INTERAGENCY

RE: Docket No. 329-12-7842.ALC; Texas Appraiser Licensing and Certification Board, Petitioner v. Tom M. Curran, Respondent

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

LDP:nl
Enclosure

xc: Troy Beaulieu, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA INTERAGENCY**
Ted Whitmer, Attorney at Law, 2508 Merrimac Court, College Station, TX 77845 - **VIA
REGULAR MAIL**
Mark Mmak, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 **VIA-INTERAGENCY**

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SOAH DOCKET NO. 329-12-7842.ALC

TEXAS APPRAISER LICENSING AND § BEFORE THE STATE OFFICE
CERTIFICATION BOARD, §
Petitioner §
v. § OF
TOM M. CURRAN, §
Respondent § ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 329-12-7842.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

v.

TOM M. CURRAN,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Appraiser Licensing and Certification Board (Staff/Board) brought this action to revoke the real property appraiser certification held by Tom M. Curran (Respondent) and impose the maximum administrative penalties, based on allegations that Respondent violated the Texas Appraiser Licensing and Certification Act (Act)¹ and the Board’s rules by producing three appraisal reports that were deliberately misrepresentative and failed to conform to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). These appraisal reports were ultimately used in mortgage fraud. The Administrative Law Judge (ALJ) recommends that Respondent pay an administrative penalty of \$5,000 and that the Board suspend Respondent’s license for a one-year period. At the end of the suspension period, Respondent should be required to submit to a mentorship.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those issues are set out in the Findings of Fact and Conclusions of Law without further discussion.

The hearing convened October 30 through November 1, 2012, before ALJ Lilo D. Pomerleau at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by attorney Troy Beaulieu. Respondent appeared and was represented by attorney Ted Whitmer. The record closed on January 4, 2013, with the filing of closing arguments.

¹ Tex. Occ. Code ch. 1103.

II. BACKGROUND INFORMATION

A. Overview

An appraisal is the act or process of arriving at a value determination.² More specifically, USPAP defines an appraisal as “the act or process of developing an opinion of value.”³

This case arose from property appraisal services performed by Respondent on three properties in the greater Dallas area. Two properties, 4004 and 4007 Brownstone Court, Dallas, Texas, are identical units and were appraised in October/November 2007 (the Brownstone units).⁴ The third property is located at 809 Edgewood Drive, DeSoto, Texas, (the Edgewood property) and Respondent appraised it in August 2007. Respondent performed each of the appraisals for the purpose of mortgage finance transactions in which the lenders, who were Respondent’s clients, were seeking to determine the value of the property so the lender/client could make a lending decision. All of the appraisal reports were summary reports.⁵

Staff alleges that Respondent deliberately violated USPAP standards, the Act, and Board rules by producing purposefully inflated, misrepresentative, unreliable, and otherwise deficient appraisal reports. In the alternative, Staff alleges that these violations, if not deliberate, were done with gross neglect. Staff’s Statement of Charges consists of three general charges and a number of specific alleged violations. The general charges are set out immediately below. The specific alleged violations are discussed in detail in Section III. of the Proposal for Decision (PFD).

Charge 1: Staff alleges Respondent violated the Act § 1103.405 and 22 Texas Administrative Code §§ 153.20(a)(3) and 155.1(a) by failing to comply with

² Tr. at 337.

³ Tr. at 338, citing from Staff Ex. 3, USPAP, at Bates 36. Hereafter, all references to page numbers refer to Bates number located in the bottom right corner of the page.

⁴ Tr. at 96, 28. The ALJ addresses the Brownstone units together unless there is a distinguishable item or issue.

⁵ Tr. at 60.

multiple USPAP standards in effect at the times he conducted the appraisals at issue.⁶

Charge 2: Staff alleges Respondent violated 22 Texas Administrative Code § 153.20(a)(9)⁷ by making material misrepresentations and omissions of material facts in his appraisals of the properties.

Charge 3: Staff alleges that Respondent violated 22 Texas Administrative Code § 153.20(a)(7) and (8)⁸ by accepting an assignment and being paid for and producing appraisal reports based upon a predetermined value. According to Staff, Respondent's conduct was more egregious than mere negligence. Staff contends Respondent deliberately appraised the three properties so as to achieve results that were predetermined, inflated, and misleading, or he appraised the properties with gross negligence. In addition, Staff contends that Respondent's response to Board Staff's complaint was intentionally misleading.⁹

Respondent denies predetermining or inflating the value of the properties or engaging in any deliberate wrongdoing.

In its Notice of Hearing, Staff seeks revocation of Respondent's certification and the imposition of an administrative penalty, and, alternatively, the imposition of an administrative penalty, an order requiring remedial education or mentorship, and/or suspension or probated revocation of Respondent's certification.¹⁰ However, in closing briefs, Staff requests revocation and the imposition of a \$5,000 administrative penalty.

⁶ Act § 1103.405 requires that a licensed appraiser comply with the most current edition of the USPAP or other standards promulgated by the Board that are at least as stringent as USPAP. Board Rule 155.1(a) requires that an appraisal performed by a person subject to the Act must conform with the USPAP standards in effect at the time of the appraisal. 22 Tex. Admin. Code § 155.1(a). The Board may suspend or revoke the license of an appraiser who has failed to comply with the applicable USPAP. 22 Tex. Admin. Code § 155.20(a)(6).

⁷ This rule was renumbered without substantive changes effective December 27, 2012, and is now located at 22 Texas Administrative Code § 153.20(a)(12).

⁸ These subsections of the rule were renumbered without substantive changes effective December 27, 2012, and are now located at 22 Texas Administrative Code § 153.20(a)(10) and (11), respectively.

⁹ Staff Ex. 2, Notice of Hearing and Original Statement of Charges. Staff's initial brief focused on the broader and larger proposed violations but did not discuss all violations set out in the Statement of Charges. The PFD briefly addresses all proposed violations.

¹⁰ The Board's current sanctions rule is found at 22 Texas Administrative Code § 153.24(9). The Board is authorized to impose an administrative penalty not to exceed \$5,000 for multiple violations. Act § 1103.552.

B. Legal Authorities

A person who holds a certificate issued by the Board is required to comply with the most current edition of the USPAP, which sets out the minimum obligations that an appraiser is required to adhere to when conducting appraisals.¹¹ Respondent performed the appraisals at issue in 2007; therefore, the 2006-2007 version of the USPAP applies to the appraisals in this proceeding. USPAP Standard 1 establishes the minimum analysis or development that an appraiser must do to conduct an appraisal. Standard 2 establishes the minimum reporting requirements. USPAP also contains an Ethics Rule, which is divided into four sections: conduct, management, confidentiality, and record keeping.

In this contested case proceeding, Staff bears the burden of proof on its allegations.¹²

C. Expert Witnesses and General Facts**1. Respondent**

Respondent has been a residential real estate appraiser since 1985, and is the sole appraiser in his own appraisal company, Tom M. Curran Appraisal Company. He has been licensed since June 18, 1991, and has had no previous Board disciplinary proceedings.¹³

Respondent testified that his job as an appraiser is to analyze data, draw conclusions based on factual and market information, and come to a value conclusion. In his discovery response, Respondent stated that his process for collecting data in all three appraisals consisted of: (1) fully searching for tax records, listings (active and pending); (2) driving by the subject area; (3) searching the area for homes with similar square footage, age, and amenities;

¹¹ Act § 1103.405; 22 Tex. Admin. Code § 155.1.

¹² 1 Tex. Admin. Code § 155.427.

¹³ Staff Ex. 1.

(4) compiling a file and beginning a neighborhood analysis; (5) determining highest and best use; (6) determining neighborhood boundaries; and (7) completing an active history of the property.¹⁴

2. Staff's Expert Witness

Robin Gray Forrester, Jr., is a Certified Residential Appraiser and an SRA member of the Appraisal Institute.¹⁵ Mr. Forrester has been conducting residential real estate appraisals for just over 30 years. He is currently employed as an appraiser investigator with the Board and has testified on behalf of the Board at SOAH and in civil matters. Mr. Forrester is the immediate past president of the Austin Chapter of the Appraisal Institute.¹⁶

Mr. Forrester explained that a real estate appraiser is a market analyst that collects, verifies, and analyzes market data to derive a value determination. As such, any misrepresented or unreliable data will result in unreliable or non-credible value. For a lender who is deciding whether to loan money for a property, an appraisal is necessary to ensure that the property is worth the amount of the loan.¹⁷ Mr. Forrester further explained that mortgage fraud can occur when a person purchases property at real market value, then inflates the value (using an inflated appraisal report), and induces the bank to lend more money than the property is worth. An appraiser that inflates the value of the property in his or her report benefits the person committing the fraud.¹⁸

Mr. Forrester also explained the process of conducting an appraisal. He indicated that an appraiser would receive an assignment from his client. The appraiser would likely do some preliminary work such as consulting local tax records, getting the approximate size of the

¹⁴ Staff Ex. 24 at 1432.

¹⁵ Tr. at 185. The SRA designation is bestowed upon appraisers who have demonstrated expertise and knowledge of appraising residential properties over and above the average appraiser.

¹⁶ Tr. at 186; Staff Ex. 9 at 898.

¹⁷ Tr. at 186-188.

¹⁸ Tr. at 188-189.

structure, the age, the acreage, etc. The appraiser would typically make an appointment to view the property, which would include measuring the outside of the structure, taking photos of the outside, going inside and noting all upgrades and renovations, and generally trying to gather as much information as possible by talking to the homeowner, if possible. An appraiser would also drive around the neighborhood to get a feel for the general area. Afterwards, the appraiser would take the data to his or her office and search for properties that have recently sold that are as similar as possible to the property under review.

Appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches. Under the sales comparison approach, the appraiser analyzes recent sales of property for characteristics such as improvement size (square footage), lot size, quality of construction, and location, thereby seeking to find the sale of the property that is most similar, *i.e.*, most comparable, to the property being appraised. Using the income approach, the appraiser determines the likely income stream and expenses associated with rental property. Under the cost approach, the appraiser considers the cost of the land, plus the cost of constructing or reconstructing the improvements, less depreciation. The cost approach is more applicable to new properties because an appraiser does not have to account for depreciation.¹⁹

The Board received complaints on three properties from the fraud intake unit of the Texas Department of Insurance (TDI) and from the fraud unit of the Federal National Mortgage Association (Fannie Mae). In response to these complaints, Mr. Forrester conducted an investigation, which included a review of Respondent's workfiles and appraisals, and his own appraisal of the properties using the data available at the time Respondent performed his appraisals.²⁰

¹⁹ Tr. at 191-194.

²⁰ Tr. at 198-199; 202.

3. Respondent's Expert Witness

Diana Jacob Tidwell (Ms. Jacob) is an Appraisal Qualification Board (AQB) USPAP-certified instructor and author specializing in compliance and regulatory issues. She was an original member of the Education Council of Appraisal Foundation Sponsors, educators who met to develop the criteria for writing the 15-hour USPAP education course, and she has sat on the AQB USPAP Exam Committee. She is also one of five persons in Texas who, under the Mentor Program, act as mentors to appraisers who have been disciplined by the Board. Currently, she also serves on the Appraisal Foundation Advisory Council as a representative of the Association of the Texas Appraisers.²¹

Ms. Jacob is a certified residential appraiser in Louisiana and a general level appraiser in North Carolina, but she is no longer appraising properties for a fee and is not certified in Texas. Because Ms. Jacob is not a licensed appraiser in Texas, she did not review and evaluate Respondent's appraisal reports. Rather, she looked at Mr. Forrester's findings and reviewed Respondent's reports to determine and reference Mr. Forrester's allegations.²²

III. ANALYSIS

A. Brownstone Units

Respondent issued an appraisal report for the 4007 Brownstone unit on November 5, 2007, effective November 2, 2007. On November 26, 2007, Respondent issued an appraisal report for the 4004 Brownstone unit, with an effective date of October 25, 2007.²³ The 4007 Brownstone unit was listed (under contract) when Respondent issued his appraisal report; the 4004 Brownstone unit was not listed.²⁴

²¹ Tr. at 632-634.

²² Tr. at 713-714.

²³ Staff Ex. 9 at 926, 827.

²⁴ Tr. at 426; Staff Ex. 10 at 1018.

1. Listing History

Staff alleges that Respondent failed to disclose, analyze, and reconcile significant and material information concerning the Brownstone units' listing histories in his appraisal reports, in violation of the following USPAP standards and rules:²⁵

- USPAP Standard 1-5(a): an appraiser must, if such information is available in the normal course of business, analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal;
- USPAP Standard 2-2(b)(viii): the report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-6(a) and (b): an appraiser must reconcile and analyze the quality and quantity of data available and reconcile the applicability or suitability of the approaches used;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly alters an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

The appraisal reports for both Brownstone units contain statements that “[t]he subject property is currently not listed ‘for sale’” and “[n]o prior sale information is currently

²⁵ The PFD lists allegations in same order as in Staff's initial brief. Staff also alleges that Respondent's actions violated the USPAP Ethics Rule pertaining to conduct and 22 Texas Administrative Code § 153.20(a)(9), now found at § 153.20(a)(12). Those allegations are discussed below in Sections III.C. and D.

available.”²⁶ However, according to Respondent’s workfile, the 4004 Brownstone unit had a list price of \$395,000 as of June 18, 2007. The unit was reduced to \$339,000 and did not sell after 92 days on the market.²⁷ Respondent appraised the property at a value of \$406,000 as of October 25, 2007.

When asked why he appraised the 4004 Brownstone unit for \$406,000, Respondent stated that the client added updates and improvements to the unit and presented a contract for sale to him. Yet the listing indicates that the unit would have been completed in September (one month before the appraisal report), and the listing references a number of amenities such as wrought iron gated entry, private backyards, rooftop decks, granite in kitchen and master, dual sinks, separate shower, and jetted tub, which presumably would have been the updates and improvements Respondent was told were being built.²⁸ Respondent did admit that he did not fully indicate in the appraisal report why the property had previously been for sale for a lower amount but was, at the time of the appraisal, worth a higher amount. Respondent admitted there were errors in the report, but he also testified that he was provided with “additional contracts that I actually relied upon that I have since found out were falsified. At the time they were provided to me, it definitely had an effect on the way I looked at the property. . . . I was also told, after conversations with the builder, that the properties were not finished.”²⁹ Even so, Respondent agreed that if there were contracts for other units, he should have disclosed the listing history and explained the basis for his appraisal.³⁰ He admitted that he could have and should have put down all the data in the appraisal report even if he had been presented with information that the property was not yet a “finished product.”³¹

²⁶ Staff Ex. 10 at 968, 1020; Tr. at 75; Staff Ex. 10 at 1012.

²⁷ Staff Ex. 10 at 1133; Tr. at 78-80.

²⁸ Staff Ex. 10 at 1122; Tr. at 90. Respondent also indicated to the Board, in his written response to the 4007 Brownstone complaint, that the Brownstone townhome project was complete before he contacted Hearn Capital Mortgage on October 31, 2007, and subsequently began the appraisal process. Staff Ex. 5 at 499.

²⁹ Tr. at 93.

³⁰ Tr. at 94. *See also* Tr. at 70-71, 94. Respondent should have provided data sources, the offering prices and the corresponding dates. He did not.

³¹ Tr. at 70, 72.

Respondent's testimony was consistent with his written response to the Board, where he indicated that he performed a search for prior sales and also relied on information from James Johnston, who told him that any previous listings did not include any "over-budgeted items."³²

Staff witness Mr. Forrester testified that, when he researched the 4004 Brownstone unit, he confirmed that similar units were above average and of good quality construction. However, his review indicated that the properties were not extensively remodeled before Respondent's appraisal.³³

Similarly, the 4007 Brownstone unit was listed in the Multiple Listing Service (MLS) archive on June 19, 2007, at \$395,000 but was reduced to \$380,000, then to \$339,000, and finally to \$299,000.³⁴ Respondent also appraised this unit at \$406,000. At the hearing, Respondent testified that he did not recall whether he knew about this sales history when he wrote his appraisal report for this unit.³⁵ In his initial response to the Board's inquiry, Respondent stated that he researched the MLS archive and was able to locate an expired listing for \$404,000, but was told by Mr. Johnston that the listing was not really an active listing. After the Board notified Respondent about the 4007 Brownstone investigation, Respondent indicated that he spoke with Tom Hill, at the Arlington Board of Realtors, and conducted research on the unit using the MLS to determine why he had failed to locate the prior sale history. Respondent also spoke with an appraisal mentor. Respondent believes that different appraisers found different results.³⁶

³² Staff Ex. 5 at 499. Mr. Johnston appears to be a builder involved with the Brownstone units. Hearn's Capital Mortgage was Respondent's client.

³³ Tr. at 217-218.

³⁴ Staff Ex. 11 at 1297; Tr. at 85-87. Respondent testified that the MLS service is a searchable, electronic database that real estate agents subscribe to and list properties on the market. Tr. at 89.

³⁵ Tr. at 85, 88.

³⁶ Staff Ex. 5 at 499.

The form Respondent used for the Brownstone appraisal reports have a number of places where an appraiser is required to disclose a previous sale. Respondent consistently omitted this information from the appraisals.³⁷ The form also includes a number of certifications made by Respondent, including:

No. 5: I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

No. 15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

Respondent's witness Ms. Jacob testified that Respondent should have included the listing history of the subject unit in each Brownstone appraisal. If the listing history was not relevant, it was Respondent's duty to explain why he discounted it. However, Ms. Jacob, after listening to the Respondent's testimony, could not testify whether Respondent purposely excluded required information or if he simply failed to properly research the properties. She did explain that, even if the listing history for each unit was in his workfiles, appraisers may have items in their workfiles that they did not use, even though they gathered such data.³⁸ Ms. Jacob also stated that if Respondent diligently talked to people involved in the transaction, such as the realtor, the builder, and the loan officer, he would be in a better position to understand the Brownstones' listing histories. Moreover, if Respondent had a sale contract for the 4007 Brownstone unit, she indicated that he should question why there was a low sales listing but a high contract value.³⁹

³⁷ Tr. at 83.

³⁸ Tr. at 719-722.

³⁹ Tr. at 727.

According to Mr. Forrester, there was no legitimate explanation for misrepresenting the listing history except that Respondent was intentionally and deliberately trying to inflate the value of the subject properties. When Mr. Forrester conducted his investigation, he spoke with the listing agent for the 4004 Brownstone unit, Richard Scott, who indicated that he had listed the property for \$339,000 in 2007 and the units were complete when they were listed. Respondent had referenced Mr. Scott in his workfile.⁴⁰

Mr. Forrester also addressed the issue concerning the higher value contracts for similar Brownstone units that Respondent testified affected his appraisal analysis. According to Mr. Forrester, an appraiser is required to reconcile different documents and data, verify it, and then arrive at a value determination.⁴¹ Mr. Forrester noted that Respondent should have reconciled the contract for \$404,000 and the sales listing of \$229,000 over a three-month period and explained why the property was worth over \$400,000. Mr. Forrester explained that a contract is reflective of a *price*, not the *value* of the property.⁴²

Staff argues that Respondent indicated in his appraisals for the Brownstone units that “[v]alues in the area are felt to be stable with the supply and demand felt to be in balance,”⁴³ and “[v]alues in the area should continue to remain stable within the foreseeable future. Supply and demand is felt to be in balance which indicates a stable market.”⁴⁴ These statements, contend Staff, make it more difficult to reconcile how Respondent believed the units were worth over \$400,000 when they had been unable to sell at lower prices in a stable market.

ALJ Analysis. The ALJ finds that Staff met its burden to show that Respondent failed to disclose, analyze, and reconcile significant and material information concerning the Brownstone

⁴⁰ Tr. at 216-218.

⁴¹ Tr. at 221, 223.

⁴² Tr. at 224-226.

⁴³ Staff Ex. 10 at 960, 1012.

⁴⁴ Staff Ex. 10 at 966, 1019.

units' listing histories in his appraisal reports. Because the differences in the sales listings for both Brownstone units were significantly lower than the value shown in his appraisals, the evidence supports a finding that Respondent's errors were substantial and significantly affected the appraisals. While the evidence indicates that Respondent failed to do a proper analysis for either Brownstone unit, he explained that he allowed existing contracts to influence him, and he relied on information presented to him by his client. The ALJ finds that his appraisals did not meet USPAP standards, but the ALJ does not find sufficient evidence to determine that Respondent knowingly made material representations or committed fraud. Rather, the appraisals contained significant errors, especially in light of Respondent's experience.

2. Sales Comparison Approach

Staff alleges that Respondent incorrectly performed a sales comparison approach for the Brownstone units. Staff contends Respondent selected superior and incomparable properties to use as comparables in his appraisal reports and searched by price for predetermined values, in violation of:⁴⁵

- USPAP Standard 1-4(a): when a sales comparison approach is necessary for credible results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion;
- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;

⁴⁵ The PFD lists allegations in same order as in Staff's initial brief. Staff also alleges that Respondent's actions violated the USPAP Ethics Rule pertaining to conduct and 22 Texas Administrative Code § 153.20(a)(9). A discussion of each of these allegations is found below in Sections III.C. and D, respectively.

- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

The ALJ first discusses Staff's allegation that Respondent selected non-comparable sales and then addresses Staff's allegation that Respondent improperly searched by price.

a. Comparable Sales

i. Respondent's Comparables

In order to perform an appraisal using the sales comparison approach, an appraiser must look at comparable sales. Respondent used the same comparable sales for both Brownstone units.⁴⁶ He agreed that, using the sales comparison approach, an appraiser tries to find properties that are similar to the property being appraised—for instance, similar location, living area, square footage, and lot size. Respondent agreed that Comparable (Comp) No. 3, a condominium, was much nicer than the Brownstone townhome units, so he made a \$50,000 downward adjustment for superior quality of construction and price per square foot, although he admitted that he did not fully explain his reasoning.⁴⁷ A look at the photographs of the interior of Comp No. 3 and the Brownstone units support a finding that Comp No. 3 is of superior construction.⁴⁸ Moreover, Comp No. 3 is a condominium not a townhome. A person buying a townhome will own the land and a buyer of a condominium will purchase the four walls surrounding the home and a percent interest in the common area.⁴⁹ While Respondent admitted that Comp No. 3 may not have been the best comparable, he stated that Fannie Mae allows a townhouse to be compared to another

⁴⁶ See Staff Ex. 10 at 1013 and 961.

⁴⁷ Tr. at 98, 106-107.

⁴⁸ Compare Staff Ex. 15 at 1310 with Respondent Ex. 2 at 44.

⁴⁹ Tr. at 276.

similar product such as a condominium.⁵⁰ He also stated that he made an error when he used it because he failed to notice it was a condominium.⁵¹

As to Comp No. 2, it appears to have a superior view than the Brownstone units.⁵² Respondent indicated that he did not actually view the roof deck on Comp No. 2 because he did not have access to the property (although he could have called the real estate agent to do so). In fact, Respondent listed the view on Comp No. 2 as inferior and added \$10,000 to the value of the comparable. Additionally, Comp No. 2 was eight years old when Respondent appraised it.⁵³

Concerning Comp No. 1, Respondent listed the sales price as \$415,000 although the sales price on the MLS listing indicated “\$340,000 Z.”⁵⁴ A “Z” indicates that the price is not verifiable. However, Respondent testified that he did not see the “Z.” If he had, he could have tried to call the real estate agent to verify the amount. He did not.⁵⁵

ii. Mr. Forrester’s Review

Mr. Forrester reviewed the comparables used by Respondent. He also performed his own search for comparables that were available during the same time period and found that Respondent’s comparables did not represent the most recent, proximate, and physically similar sales to the subject property. Specifically, Mr. Forrester stated that Comp No. 3 is a condominium not a townhome, has a superior view, and has superior quality of construction. Although Respondent made a large adjustment to this comparable because it was superior,

⁵⁰ Tr. at 112.

⁵¹ Tr. at 114.

⁵² Compare Staff Ex. 15 at 1308 with Respondent Ex. 2 at 44; Tr. at 255.

⁵³ Staff Ex. 10 at 1013; Tr. at 120-121.

⁵⁴ See Staff Ex. 5 at 517.

⁵⁵ Tr. at 120-123.

Mr. Forrester testified that it would be better to use available property that was more similar to the subject property.⁵⁶

Mr. Forrester testified that Comp No. 2 has a clearly superior view as compared to the Brownstone units, which do not have a view of the Dallas skyline. Yet Respondent made a positive \$10,000 adjustment to reflect that Comp No. 2 had an inferior view.⁵⁷ Mr. Forrester opined that it was not necessary to use an eight-year-old property because there were new townhomes within close proximity to the Brownstone properties.⁵⁸

Concerning Comp No. 1, Mr. Forrester testified that the sales price, which was listed as \$415,000 Z, was overstated by \$75,000.⁵⁹ Mr. Forrester noted that Respondent had called the listing agent for that property to inquire about square footage—he should have known to ask about the sales price because it was a “Z” listing. Mr. Forrester contacted the same listing agent and found out that the sales price in 2007 was \$340,000.⁶⁰ Moreover, Comp No. 1 is located a block from Greenville Avenue, which has shops and stores. Mr. Forrester explained that an appraiser can conduct an MLS search by neighborhoods. In Mr. Forrester’s opinion, Comp No. 1 is in a different neighborhood than Brownstone properties, and it was inaccurate for Respondent to have listed them in the same location. Mr. Forrester, using the same information that Respondent had access to in 2007, found that properties in the Greenville area sold in a range from \$85,000 to \$871,000, with an average of \$385,484. The Brownstone area properties sold in a range from \$71,000 to \$585,000, with an average of \$270,337. The two areas had an approximate difference of \$115,000 in average sales price.⁶¹

⁵⁶ Tr. at 248-251.

⁵⁷ Tr. at 251-255; compare Staff Ex. 15 at 1308 to Respondent Ex. 2 at 44.

⁵⁸ Tr. at 255-257; Staff Ex. 15 at 1306.

⁵⁹ Respondent’s appraisal report also contained a typographical error concerning the address.

⁶⁰ Tr. at 262-263.

⁶¹ Tr. at 264-269; Staff Ex. 10 at 1012; Staff Ex. 12 at 1298, 1299.

iii. Mr. Forrester's Expertise

Respondent argues that the Board's expert witness, Mr. Forrester, failed to comply with USPAP in conducting his appraisals of the properties at issue. However, the Board's rule exempts investigators from USPAP compliance:

A Jurisdictional Exception is adopted for the members, staff, and peer review committee members of the Texas Appraiser Licensing and Certification Board for all appraisal reviews relating to enforcement and disciplinary cases, applications, renewals, and experience verification audits.⁶²

Respondent also took issue with the ability of Mr. Forrester to perform an appraisal of Dallas-area properties because his experience is with Austin-area markets. Ms. Jacob testified that Mr. Forrester does not work in the Dallas area and lacks the required day-to-day knowledge to perform appraisals. According to Ms. Jacob, Mr. Forrester would need to first attain competency before performing Dallas-area appraisals.⁶³ However, Ms. Jacob agreed she did not dispute Mr. Forrester's opinion of value or his opinion as to what was a comparable property.⁶⁴

iv. Ms. Jacob's Testimony

Ms. Jacob indicated that, although a condominium is a different product from a townhome in terms of how the land is owned, the lifestyle and building design is very similar. While she would prefer that an appraiser use the same product—in this case a townhome—if there were no other sales, a condominium would be a more appropriate or comparable sale than a detached single-family structure. If a different product is chosen, however, the appraiser should address any differences in the appraisal report.⁶⁵

⁶² 22 Tex. Admin. Code § 155.1(b).

⁶³ Tr. at 658.

⁶⁴ Tr. at 717.

⁶⁵ Tr. at 658-659.

ALJ Analysis. By a preponderance of the evidence, the record evidence supports Staff's position that Respondent selected comparables that were not truly comparable properties. Ms. Jacob's testimony that Mr. Forrester's lacked expertise to conduct an appraisal was credible, but Mr. Forrester was not performing an appraisal for a client, he was conducting a review. Mr. Forrester exhibited a general familiarity with the Dallas-area, he visited the area, and he actually viewed Respondent's comparables. Mr. Forrester's testimony that there were other newly constructed townhomes in the market area that were more similar to the Brownstone units was uncontroverted. Moreover, the remarks Respondent made in the Brownstone appraisal reports that the subject properties had observation decks with similar views to the comparable (or for Comp 2, a better view) was not borne out by the picture evidence or by Mr. Forrester's testimony. Finally, Respondent indicated in discovery that he had experience and expertise with the market area, having just completed a project located several blocks from the Brownstones. Unfortunately, Respondent did not demonstrate his experience at the hearing and did not show that the comparables he used were indeed comparable to the subject properties and that other comparables referenced by Mr. Forrester were not more appropriate.⁶⁶

b. Search for Price

In a response to the Board Staff concerning the 4007 Brownstone property, Respondent stated:

As you can clearly see townhomes were ranging from \$155.00-\$184.00 per square foot for inferior properties versus the subject property. I selected to utilize this townhome for a base value for the subject property. I selected to utilize the Median [sic] price per square foot of (\$159.00 X 2,500 = \$397,500). I considered this a good place to start for my selection of comparables.⁶⁷

According to Mr. Forrester, Respondent's statement indicates that he used MLS to search for price, which allows a person to exclude properties below (or above) a certain amount.

⁶⁶ Also compare Staff Ex. 4 at 420, 492-493 with Staff Ex. 5 at 500.

⁶⁷ Staff Ex. 5 at 499.

Excluding any low sales inflates the sales values of area properties and, according to Mr. Forrester, allows an appraiser to aim for a specific price. Mr. Forrester indicated that the correct way to search for comparables is to use gross living area, age, or location as search criteria and not be concerned with the sales price. He believes that searching by sales price is another indicator of mortgage fraud.⁶⁸

Respondent disagreed. He testified that he did not conduct a search based on sales price. Rather, he conducted a search for properties that had a comparable square-foot price.⁶⁹

Q. [Staff] Isn't it true, sir, right there on Bates 499 and 500 you just said I searched based on the minimum price?

A. [Respondent] Absolutely not. I based on a – I tried to find a range of 155 to 184 to calculate against. It has nothing to do with the price.

Q. So “397,500, I considered this a good place to start,” did you search for properties that were worth less than 397,500?

A. Absolutely.

Q. Well, then –

A. I didn't search on sales price. I searched on price per square foot.

Q. How come all of your comparables that you picked are over \$400,000?

A. The price per square feet are very similar, though. . . .⁷⁰

Respondent continued to explain that he used a middle range on the high side because he had seen some of the properties that were selling for \$325,000, and they were not at all comparable.⁷¹ Later in the hearing, Respondent explained his overall process for appraisals. When appraising, he would begin by searching by “subject addition” or similar homes: at the time of the Brownstone appraisals, Respondent found ten townhomes. He then would search by square footage, location, amenities, and design. He explained that he would conduct a search by square foot after the other searches were completed because the report requires an appraiser to search by sales price and report the active listings and closings. Respondent stated that he did

⁶⁸ Tr. at 272-275.

⁶⁹ Tr. at 177-178; Staff Ex. 5 at 499.

⁷⁰ Tr. at 177-178.

⁷¹ Tr. at 179.

not know the value before he began and was not taught to start the process by searching by price.⁷²

Respondent testified that the appraisal report form he used requires a search by square foot. The place where the report requires an appraiser's input is located on the page with the list of comparables. At the top it states: "There are [blank] comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ [blank] to \$ [blank]" and "There are [blank] comparable sales in the subject neighborhood within the past 12 months ranging in sale price from \$ [blank] to \$ [blank]."⁷³ He testified that he used objective criteria for an original search in MLS.

Q. [Staff] Okay. So then you didn't need to search by price to answer this? [Referring to report requirements.]

A. [Respondent] Well, again, my understanding of the question was to run it by sales price.

Q. Well, that's what I'm confused about. I want you to pick which one. Either your testimony is you needed to search by price to answer these questions or are you saying, "I didn't search by price to answer these questions. I searched by square footage"?

A. But these ranges were found in the first run.

Q. Okay. So you're saying that when you ran your sales originally, you were searching by objective criteria?

A. Correct.⁷⁴

...

Q. [Respondent's attorney] Is what you're saying that you search objectively to get the value of the subject. Right?

A. [Respondent] Absolutely not.

Q. Okay. Once you have the value of the subject – let's pretend it's \$150 a square foot, from objective criteria.

A. Correct.

Q. Then you assume that the market, if they're buying a house worth \$150 a square foot, might would go from 140 to 160 a square foot?

A. Correct.

Q. And then you run to see what's in that market for 140 –

A. Correct.

⁷² Tr. at 620.

⁷³ Staff Ex. 10 at 961 (one example).

⁷⁴ Tr. at 628-629.

Q. I see. That's what I thought you were saying, yes. Okay. You realize you wouldn't have to do that if you could just pull it off those sheets. Right? Why do you do it then, at 140 to 160?

A. Because that's where the range is falling for the square footage.⁷⁵

Ms. Jacob presented testimony concerning this issue from an instructor's point of view. She explained that using price as criteria in a search will target a market, a performance, and a value that might not be there. When an appraiser receives a contract for the subject property, his or her job is not to find the value according to the contract but to analyze the property's market and indicate whether the contract appears reasonable. According to Ms. Jacob, the Appraisal Institute has a definition of how an appraiser should undergo a comparable sale selection. It clearly indicates that an appraiser should never search by price only, but, in a discussion about bracketing (*i.e.*, looking at comparable or similar relevant units), price is one of the units used in a search. Ms. Jacob testified that she had an experience with an appraiser who misunderstood this and used price as a beginning point rather than just one method for searching. Using price as a beginning point is clearly incorrect. Ms. Jacob further testified that there is no specific USPAP provision that prohibits searching by price. Rather, USPAP requires an appraiser to employ proven techniques necessary to develop a credible opinion of value.⁷⁶

ALJ Analysis. This is a difficult issue to determine. In his written response to the Board, Respondent indicated that he selected a price per foot to begin his selection of comparables. Yet Respondent testified repeatedly that he did not conduct an MLS search by price at the outset. Rather, he stated that he used objective criteria. Although it appears that most appraisers use the outcome of initial searches to fill in the price ranges of comparable properties currently offered for sale and properties sold in the past 12 months, Respondent instead performed another search by square foot to fill in the information required on the appraisal forms.

⁷⁵ Tr. at 630.

⁷⁶ Tr. at 673, 675-678.

Staff supports its position—that Respondent was incorrectly and fraudulently searching by price—by the fact that all the comparables Respondent used were priced over \$400,000. Staff further points out that Respondent tried to explain that the Fannie Mae appraisal report form required him to search by price, but Staff disputes this.

The ALJ finds that Respondent incorrectly searched by price. In his response to the Board Staff, Respondent indicated that he began his selection for comparables with a search by price per square foot. He then explained his next steps, which included inspection and a research of land value.⁷⁷ Respondent's explanation that he searched by price only to fill in necessary information on the appraisal reports did not make sense because he would have had information concerning price ranges for comparable properties based on searches, using other criteria. Moreover, the ALJ found Ms. Jacob's testimony on this issue to be instructive: it is likely that Respondent mistakenly used price as a beginning point rather than a search to verify his results from other searches or as a simple means for determining price ranges for comparables.

The ALJ acknowledges that Respondent testified repeatedly that he did not initially search by price. This is at odds with other evidence and, ultimately, the ALJ's finding. However, Respondent's error in this regard did not appear to be fraudulent in nature. Rather, based on his demeanor and admitted confusion, he conveyed to the ALJ that he had a fundamental misunderstanding and that misunderstanding was reflected in his choice of comparables.

3. Neighborhood and Market Area Trends

Staff alleges that Respondent failed to truthfully disclose and analyze the neighborhood and market area trends in violation of:⁷⁸

⁷⁷ Staff Ex. 5 at 499-500.

⁷⁸ The PFD lists allegations in same order as in Staff's initial brief. Staff also alleges that Respondent's actions violated 22 Texas Administrative Code § 153.20(a)(9). A discussion of this allegation is found in Section III.D. of the PFD.

- USPAP Standard 1-3(a): an appraiser must identify and analyze the effect on use and value of existing land use regulations, reasonable probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends;
- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

Respondent testified that appraisal reports should include a summary of an appraiser's reasoning and analysis. For instance, under the "Supplemental Addendum," an appraiser should include neighborhood and market comments. For the Brownstone units, Respondent indicated, "[t]he area consists of average to luxury quality dwellings which appear to be receiving above average maintenance and upkeep."⁷⁹ However, Respondent admitted that the immediate area also included some run-down properties, which were typical or average for that area. At the time of the appraisal, a few area houses were dilapidated, falling-down, and boarded up. Respondent admitted this was not fully explained in his appraisals.⁸⁰ According to Respondent, the properties were changing: for instance, some "crack houses" were being replaced with expensive townhomes.⁸¹

⁷⁹ Staff Ex. 10 at 966.

⁸⁰ Tr. at 64-65.

⁸¹ Tr. at 64.

Staff witness Mr. Forrester testified that the Brownstone area, when he viewed the property in 2012, included properties that were “scuzzy,” such as dilapidated buildings, boarded up commercial properties, and garbage dumpsters on the corner. Mr. Forrester took pictures of the area five years after the appraisal. He also spoke to people in the neighborhood. He concluded that, in 2007, the area did not consist of average to luxury quality dwellings, as Respondent indicated in the Brownstone appraisals. Rather, he found that the area included several run-down houses. He confirmed the neighborhood was generally the same in 2007 by talking to a person who worked across the street from the Brownstone property. In his opinion, the inconsistency is another indicator of mortgage fraud.⁸²

Mr. Forrester also stated that Respondent failed to describe the neighborhood boundaries correctly, which skewed the data and represented that the neighborhood was more prosperous. According to Mr. Forrester, Respondent’s neighborhood area was huge and did not accurately reflect the true neighborhood. In his opinion, this is often done in cases of mortgage fraud to inflate the value.⁸³ Staff argues that Respondent was familiar with the area and should not have indicated that the area consists of average to luxury quality dwellings without also noting that other area dwellings that were in a state of disrepair or neglect. However, Mr. Forrester also admitted that the market changed significantly after the financial crisis in September of 2008, which could leave properties in worse condition.⁸⁴ Moreover, Mr. Forrester could not explain why the neighborhood search he conducted using smaller boundaries came up with similar data to the search Respondent conducted using greater neighborhood boundaries.⁸⁵

Respondent witness Ms. Jacob agreed with Mr. Forrester that if there were run-down houses in the Brownstone area, Respondent should have disclosed it because an appraiser is

⁸² Tr. at 270; Staff Ex. 12 at 1319.

⁸³ Tr. at 227-228; Staff Ex. 9 at 876.

⁸⁴ Tr. at 340, 343.

⁸⁵ Tr. at 429-430.

required to “tell the whole story.”⁸⁶ She further agreed that failure to disclose the complete character of the neighborhood is another typical red flag in mortgage fraud cases.⁸⁷ However, Ms. Jacob indicated that the neighborhood boundaries used by Respondent and Mr. Forrester appeared to be the same because the MLS runs were the same.⁸⁸

ALJ Analysis. The ALJ finds that Respondent failed to truthfully disclose and analyze the neighborhood and market area trends. If the area had some run-down properties, Respondent had an obligation to explain why he indicated in the report that the area consisted of average to luxury quality dwellings with above-average maintenance. The ALJ concurs with Staff that these statements made the neighborhood sound more affluent than it was, and an appraiser must present a clear picture for the lender, who is not familiar with the area. However, the ALJ did not find sufficient evidence that Respondent’s neighborhood boundaries were incorrectly drawn. Respondent clearly had the necessary expertise, and the data from the MLS runs did not support Staff’s position on this issue.

4. Cost Approach

Staff alleges Respondent misrepresented the data regarding the cost approach. In particular, Staff took issue with: (1) the cost of construction of improvements to the Brownstone properties; and (2) lack of support for his lot values. According to Staff, these are violations of:⁸⁹

- USPAP Standard 1-4(b)(i-iii): when a cost approach is necessary for credible results, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique; analyze comparable cost data to estimate the new

⁸⁶ Tr. at 746.

⁸⁷ Tr. at 747.

⁸⁸ Tr. at 704-705.

⁸⁹ The PFD lists allegations in same order as in Staff’s initial brief. Staff also alleges that Respondent’s actions violated the USPAP Ethics Rule pertaining to conduct and 22 Texas Administrative Code § 153.20(a)(9). A discussion of these general allegations is found in Section III.C. and D. of the PFD.

cost of improvements, if any; and analyze data to estimate the difference between the cost new and the present worth of the improvements;

- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

a. Construction Costs

A cost approach analysis is applicable to new construction such as the Brownstone units because a purchaser will not want to pay more for a property than it would cost to hire a builder and construct the unit. Moreover, an appraiser does not have to account for depreciation.⁹⁰ Both Respondent and Mr. Forrester agreed that the cost approach sets the upper range of value.⁹¹

Using a Marshall & Swift cost manual, Mr. Forrester calculated a replacement cost of \$94.21 per square foot for the 4007 Brownstone unit while Respondent calculated the replacement cost at \$130 per square foot.⁹² Mr. Forrester admitted that an appraiser has some discretion in calculating the number by indicating if the quality of construction is average, but he

⁹⁰ Tr. at 163, 192.

⁹¹ Tr. at 192.

⁹² Tr. at 300-312; *compare* Staff Ex. 18 at 1330 *with* Staff Ex. 10 at 1014. Appraisers generally subscribe to Marshall & Swift. Tr. 315.

stated he performed the calculation using “good quality” construction as did Respondent. Respondent did not include any notes in his workfiles showing the calculations for determining the cost of construction. Mr. Forrester concluded that Respondent inflated the Marshall & Swift analysis or did not use Marshall & Swift at all.⁹³

Staff also argues that, because the cost of construction tends to set the upper limit of value, Respondent should have easily recognized that something was amiss when his cost approach calculations were indicating values way above the units’ listing histories particularly since these were brand new construction properties.

Respondent testified he used Marshall & Swift to reach a construction cost of \$130 per square foot. He explained that the initial Marshall & Swift amount was much lower (\$90 or \$95 per square foot) but there were so many improvements that he added to that base.⁹⁴ Respondent argues that the cost approach did not contribute significantly to the overall value and any error would not violate USPAP. Respondent also contends that the cost approach manual often results in an erroneous cost indication and is not necessary to produce a credible result.

ALJ Analysis. Mr. Forrester produced cost figures using the same inputs as Marshall & Swift but calculated lower cost figures than did Respondent. The ALJ finds credible Respondent’s testimony that he had access to Marshall & Swift. However, Respondent did not have any support for his calculations in his workfile, in violation of USPAP requirements. At the hearing, Respondent did not present convincing evidence that his construction costs were reasonable and supported. However, Staff did not present evidence that the inflated construction costs affected the appraisal values for the Brownstone properties.

⁹³ Tr. at 312-313. Respondent did not have a Marshall & Swift subscription; he used or shared a subscription from another appraiser. Tr. at 315-317.

⁹⁴ Tr. at 167-168.

b. Lot Values

Once an appraiser determines the cost of the construction and improvements, he or she will add the cost of the lot. The Brownstone appraisal reports include a statement that the site value was based on “land sales, developers, and appraiser’s information.”⁹⁵ At the hearing, Respondent referenced a number of properties listed as land sales that he used to support a \$60,000 lot value.⁹⁶ However, Staff witness Mr. Forrester testified that Respondent failed to support his lot values either in the appraisal reports or in his workfiles. He noted that the listings Respondent included in his workfiles included information for some tracts listed in the millions of dollars, which would not be a recognized method to support lot value. Mr. Forrester stated that an appraiser is required to give some type of analysis and explanation, but Respondent failed to do so.⁹⁷

Respondent argues that he had support for his lot values and that the lot value was insignificant to the determination of the overall property value.

ALJ Analysis. The ALJ concurs with Staff that Respondent did not have support for his lot values in his reports or in his workfiles. This is a violation of the USPAP requirement that appraisal report numbers must be supported either in the report itself or in the appraiser’s workfile. However, Staff did not present evidence that the lot values significantly affected the value of the Brownstone units.

⁹⁵ Staff Ex. 10 at 1014.

⁹⁶ Tr. at 169-172; *see* Staff Ex. 10 at 1119, listing of lot addresses, cost, cost per square foot, type of sale.

⁹⁷ Tr. at 306-307.

5. Other Allegations

a. Site Size

Staff also alleged that Respondent misrepresented the size of the Brownstone units' sites, in violation of USPAP Standard 1-2(e)(i) and 2-2(b)(iii). Mr. Forrester found that Respondent inaccurately reported the size of the entire tract on which the Brownstone units are located and concluded that this is a USPAP violation.⁹⁸ Respondent admitted that his appraisal reports should have better explained that the site size total referred to the entire property before it was platted into small lots.

ALJ Analysis. The evidence shows that Respondent erred in his Brownstone reports, in violation of USPAP. Staff did not put forth evidence that this error affected Respondent's value determination.

b. Zoning Classification

Staff alleged that Respondent failed to consider and report the Brownstone units' correct zoning classification in violation of USPAP Standard 1-2(e)(iv) and 2-2(b)(viii). Mr. Forrester found that Respondent misreported the zoning, which should have been PD-298 according to the City of Dallas.⁹⁹ Mr. Forrester admitted that appraisers misreport zoning classifications very often (100% of the time).¹⁰⁰

ALJ Analysis. The evidence shows that Respondent erred in filing out the zoning classifications on his Brownstone reports, in violation of USPAP. Staff did not put forth evidence that this error affected Respondent's value determination.

⁹⁸ Staff Ex. 9 at 875.

⁹⁹ Staff Ex. 9 at 875.

¹⁰⁰ Tr. at 420-421.

c. Highest and Best Use

USPAP Standard 1-3(b) requires that when the value opinion to be developed is market value, an appraiser must develop an opinion of the highest and best use of the property. USPAP Standard 2-2(b)(ix) requires that, when reporting an opinion of market value, an appraisal report must summarize the support and rationale for the appraiser's opinion of the highest and best use of the property. Mr. Forrester pointed out that Respondent indicated that the present use was the "present use" but failed to provide support for that determination.

ALJ Analysis. The evidence indicates that Respondent failed to provide support for his highest and best use determination in violation of USPAP Standards 1-3(b) and 2-2(b)(ix). Staff did not put forth evidence that this error affected Respondent's value determination.

B. Edgewood Property

Respondent issued a summary appraisal report for the Edgewood property on August 1, 2007, with an effective date of June 26, 2007. Mr. Forrester found that Respondent produced a misleading appraisal report, with numerous material misrepresentations and omission of material facts. He stated that Respondent deliberately and intentionally inflated the value of the property to arrive at a predetermined value. Specifically, Staff alleges Respondent violated a number of USPAP Standards in his appraisal of the Edgewood property. These are discussed below.

1. Listing History

Staff alleges that Respondent failed to disclose, analyze, and reconcile significant and material information concerning the Edgewood property's listing history in his appraisal report, in violation of the following USPAP standards and rules:¹⁰¹

¹⁰¹ The PFD lists allegations in same order as in Staff's initial brief. Staff also alleges that Respondent's actions violated the USPAP Ethics Rule pertaining to conduct and 22 Texas Administrative Code § 153.20(a)(9). A discussion of these allegations is found below in Sections III.C. and D., respectively.

- USPAP Standard 1-5(b): an appraiser must, if such information is available in the normal course of business, analyze all sales of the subject property that occurred within the three years before the appraisal effective date;
- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;
- USPAP Standard 1-6(a) and (b): an appraiser must reconcile and analyze the quality and quantity of data available and reconcile the applicability or suitability of the approaches used;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly alters an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

The Edgewood property, a newly constructed home at the time of the appraisal, is in a single family residential subdivision located in DeSoto, Texas. The builder was D.R. Horton. On the first page of the appraisal report, Respondent indicated that the owner of public record was “TLH & Associates,” and that the builder, D.R. Horton, sold the property to TLH & Associates.¹⁰² Yet Respondent’s appraisal report stated that his “research did not reveal any prior sales or transfers of the subject property.”¹⁰³ On the appraisal report, under “Date of Prior

¹⁰² Tr. at 139-140; Staff Ex. 10 at 1179.

¹⁰³ Staff Ex. 10 at 1180; Tr. at 132; Tr. at 128-130.

Sale/Transfer,” Respondent typed: “None/MLS.”¹⁰⁴ On a page titled “Property History of Subject Property” in the appraisal report, Respondent checked boxes indicating that the subject property had no change of ownership in the last three years and that the Grantor/Grantee was TLH & Associates, with an indication that Respondent’s data source was “Builders.”¹⁰⁵ At the end of the appraisal report, Respondent again indicated: “No prior sale information is currently available.”¹⁰⁶ At the hearing, Respondent could not recall whether D.R. Horton had sold the property to TLH & Associates, but he admitted he stated that in his appraisal report so he must have known it at the time.¹⁰⁷

Included in Respondent’s workfile is an inventory/sales sheet from the builder, D.R. Horton. The sheet includes a handwritten reference to Shirley Kotwani and a phone number. Respondent admitted that the handwriting was his, but he could not recall her connection with D.R. Horton. He admitted that if she were the closing coordinator for D.R. Horton, it would have been a common practice for him to have spoken with her because she would know the builder’s sales history.¹⁰⁸ The inventory/sales sheet is a list of 16 homes, one of which is at 809 Edgewood, with a builder’s price of \$218,295, an offer price of \$179,635, and an estimated value of \$238,050. Respondent appraised this same property at \$255,000.¹⁰⁹ Referring to the inventory/sales sheet, Respondent explained that this was a cash deal for bulk properties.¹¹⁰ He admitted that he erred by excluding the information about the sale from the builder to TLH & Associates in his appraisal report.¹¹¹

¹⁰⁴ Staff Ex. 10 at 1180.

¹⁰⁵ Staff Ex. 10 at 1185.

¹⁰⁶ Staff Ex. 10 at 1186.

¹⁰⁷ Tr. at 140.

¹⁰⁸ Tr. at 136-138; Staff Ex. 10 at 1294.

¹⁰⁹ Tr. at 143; Staff Ex. 10 at 1294.

¹¹⁰ Tr. at 142-143.

¹¹¹ Tr. at 144.

Mr. Forrester testified that the failure of an appraiser to list prior sales histories is often a warning sign of fraudulent activity.¹¹² He noted that the Edgewood property sold on July 9, 2007, for \$179,635, yet Respondent appraised it on August 1, 2007, for \$255,000. Mr. Forrester stated that a competent, ethical appraiser would need to reconcile the previous sale, but Respondent failed to do so.¹¹³ As to the issue of bulk sales, Mr. Forrester admitted that all 16 sales on the inventory/sales sheet closed around the same time. Moreover, approximately 12 or 13 of the properties on the list (including the Edgewood property) were part of a mortgage fraud schemes with two main culprits, TLH & Associates and Jas Bell Construction, responsible for most of the listed sales.¹¹⁴

Staff points out that Respondent misrepresented the Edgewood sales history at seven different locations on four different pages of the appraisal report.¹¹⁵ Staff dismisses Respondent's contention that the Edgewood property was part of a bulk sale and, therefore, was heavily discounted. Staff also points out that Respondent did not previously disclose his theory that the bulk sales should be discounted when he submitted documents and orally responded to the Board Staff during the complaint stage of the investigation. Staff argues that Respondent's claims are not credible. Moreover, Respondent does not have any notation in his workfile that the builder inventory/sales sheet are bulk sales or that Respondent talked with the closing coordinators about bulk sales. There were no such notations in his files. Mr. Forrester testified that he checked the builder inventory/sales sheet listings with the Dallas County Appraisal District tax records and spoke with the closing coordinator. He believes that the sales were not bulk sales; rather, the properties sold to different individuals. He further stated that some sales amounts listed on the builder's inventory/sales sheet were lower than listed on the sheet. Mr. Forrester concluded that Respondent's explanation about bulk sales was not credible.¹¹⁶

¹¹² Tr. at 212-213.

¹¹³ Tr. at 291-292.

¹¹⁴ Tr. at 765-769.

¹¹⁵ See Tr. at 131-135; 136; Staff Ex. 10 at 1180, 1183, 1185, and 1186.

¹¹⁶ Tr. at 753-756.

Ms. Jacob testified that a bulk sale could result in discounted prices. While there may be numerous reasons for a bulk sale, the primary reason is that the seller, often the builder, wants out of the market. Ms. Jacob indicated that, if Respondent was right to exclude other bulk-sale listings as comparable properties, he still should have explained why he was excluding such listings.¹¹⁷

ALJ Analysis. The evidence supports a finding that many of the properties listed on the inventory/sales sheet were used in fraud and, therefore, were essentially bulk or discounted sales. The ALJ found credible Ms. Jacob's testimony that bulk sales may not have been appropriate to rely on for determining an appraisal value. Thus, Respondent could have discounted the bulk sales if he had explained his rationale in his appraisal report. But Respondent clearly violated USPAP by failing to include the prior sales history of the Edgewood property. While Staff argues that Respondent repeatedly presented untruthful information, the ALJ notes that Respondent's failure to list any sales history was consistent in his report. At the hearing, Respondent could not explain why he had omitted the sales history except to say that he was unable to locate any information about it. Ms. Jacob and Mr. Forrester both explained that an appraiser should investigate, reconcile, or at least make note if there is conflicting information. On the face of the Edgewood appraisal report, there was conflicting information and no explanation.

2. Sales Comparison Approach

Staff alleges that Respondent misrepresented information and analysis in the sales approach for the Edgewood appraisal, as he did for the Brownstone properties, in violation of the following standards:¹¹⁸

¹¹⁷ Tr. at 689-690.

¹¹⁸ These allegations are listed in the order of Staff's initial brief. Staff also alleges that Respondent's actions violated the USPAP Ethics Rule pertaining to conduct and 22 Texas Administrative Code § 153.20(a)(9). A discussion of each of these main allegations is found in Sections III.C. and D.

- USPAP Standard 1-4(a): when a sales comparison approach is necessary for credible results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion;
- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

In his report, Respondent used three comparables. Comp No. 2 was a home built by D.R. Horton; the other comparables were built by a competing builder, Standard Pacific Homes, and they were located in Cedar Hill, Texas. Respondent testified that there were few comparable sales in the area, so he chose comparable properties from competing builders within the market area and with similar school districts. He indicated that, because of the builder's bulk sale, properties in and around the Edgewood neighborhood were located in a discounted bubble so he used comparable properties outside the immediate area in order to perform a market valuation based on an arm's length transaction, not on the builder's bulk sale.¹¹⁹ But he admitted that he should have disclosed his rationale for excluding area properties on the appraisal report.¹²⁰

¹¹⁹ Tr. at 156-159; Staff Ex. 24 at 1432-1433.

¹²⁰ Tr. at 176.

In his closing brief, Respondent points out that he used comparables from an area with similar properties, which is allowed under USPAP because an appraisal is an opinion of value and his actions were within the judgment allowed to an appraiser. The appraisal itself notes that:

The subject property is located within a small pocket of new [sic] construction homes surrounded by million dollar+ estates. Very few new construction homes are available. Therefore this appraiser found it necessary to widen the search area to competing areas within a 5 mile radius. Sale #1 and Sale #3 are selected from competing builder [sic], whereas, Sale #2 is selected from the subject addition.¹²¹

Staff witness Mr. Forrester testified that Respondent did not select sales that were similar to the Edgewood property and that there were other, closer properties that were available. Yet, in his review checklist, Mr. Forrester stated that there were no recent (verifiable) sales similar to the subject in the Edgewood subdivision. Rather, there were very similar sales in adjoining and nearby subdivisions.¹²² Mr. Forrester specifically took issue with the comparables located in Cedar Hill, which were located almost three miles away from the subject property. He found there were other sales in the area that were readily available. When he performed his appraisal of the Edgewood property using 2007 data, Mr. Forrester located area sales in DeSoto that ranged from \$170,000 to \$210,000. These figures comported with the recent (bulk) sale of \$179,635 from the builder to TLH & Associates for the subject property. Mr. Forrester concluded that Respondent used comparables outside the subject area to support the contract value of \$252,000 and to appraise the property at \$255,000.¹²³

Mr. Forrester also noted that Respondent chose non-verifiable sales for all three of his comparables. These are sales that come from the builder and, thus, cannot be publicly verified. According to Mr. Forrester, the use of non-verifiable builder sales is not a recognized method of

¹²¹ Staff Ex. 7 at 721.

¹²² Staff Ex. 9 at 907. *See also* Staff Ex. 4 at 407. This is an appraisal by for Genworth Financial (which filed a complaint with the Board about the Edgewood property). The Genworth Financial appraiser noted that his comparable properties were all located in excess of one mile from the subject property.

¹²³ Tr. at 297, 299-300; Staff Ex. 20 at 1340.

the sales comparison approach and violated USPAP 1-1(a) and 1-4(a).¹²⁴ If such a sale is used, an appraiser would need to verify the information from the builder by looking at a closing statement, talking with the closing coordinator, or contacting the buyer. Mr. Forrester testified that Respondent did not verify the comparables except to note in his workfile a phone number for Standard Pacific Homes. He stated this was insufficient documentation to support verification.¹²⁵ However, Mr. Forrester admitted that USPAP does not prohibit or mention non-verifiable sales. Rather, Fannie Mae's supplemental standards in 2007 contained guidelines that recommended an appraiser use only verifiable sales.¹²⁶

ALJ Analysis. The evidence supports a finding that Respondent did not fully disclose his rationale for selecting homes outside the Edgewood area. If he excluded the sales on the inventory/sales sheet because they were bulk sales, he did not disclose such. The ALJ agrees with Staff that Respondent should have explained his rationale for his selection of the Cedar Hill properties (similar schools, etc.) and why properties near the Edgewood property were not comparable. And Respondent's workfile should have contained such information. The evidence further indicates that Respondent did not verify the builder sales as required by the Fannie Mae guidelines, but this was not shown to be a USPAP violation. However, the ALJ does not conclude that Respondent's choice of comparables was improper. Respondent, who had more experience in the DeSoto area than did Mr. Forrester, indicated there were few new builder sales in the area.¹²⁷ While Mr. Forrester found otherwise, he may have been using the sales listed on the inventory/sales sheet, which likely should have been discounted or further explained. Without additional evidence, Staff did not meet its burden to prove Respondent's choice of comparables was incorrect.

¹²⁴ Tr. at 293; Staff Ex. 9 at 907.

¹²⁵ Tr. at 294-296.

¹²⁶ Tr. at 474-476.

¹²⁷ Similarly, the Genworth Financial appraiser also used comparable properties in excess of one mile from the Edgewood property.

3. Neighborhood and Market Area Trends

Staff alleges that Respondent failed to truthfully disclose and analyze the neighborhood and market area trends in violation of:¹²⁸

- USPAP Standard 1-3(a): an appraiser must identify and analyze the effect on use and value of existing land use regulations, reasonable probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends;
- USPAP Standard 2-2(b)(viii): a report must state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile;
- USPAP Standard 1-1(a): an appraiser must be aware of, understand, and correctly employ recognized methods and techniques necessary to produce a credible appraisal;
- USPAP Standard 1-1(b): an appraiser must not commit a substantial error of omission or commission that significantly affects an appraisal;
- USPAP Standard 1-1(c): an appraiser must not render service in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results, in the aggregate affects the credibility of those results; and
- USPAP Standard 2-1(a): each report must clearly and accurately set forth the appraisal in a manner that is not misleading.

In the Edgewood property appraisal report, Respondent indicated that: “[v]alues in the area should continue to remain stable within the foreseeable future. Supply and demand is felt to be in balance which indicates a stable market.”¹²⁹ Staff questioned why Respondent would indicate that the area was stable yet the Edgewood property (and others listed in the builder’s inventory) had sold for significantly less. In response, Respondent stated he thought the property

¹²⁸ These allegations are listed in the order of Staff’s initial brief. Staff also alleges that Respondent violated 22 Texas Administrative Code § 153.20(a)(9). A discussion of this allegation is found below in Section III.D.

¹²⁹ Staff Ex. 10 at 1189; Tr. at 146.

was worth more than the greatly discounted bulk sale because the builder wanted out of that area.¹³⁰ However, Respondent conceded that he should have explained his reasoning in the appraisal report and reconciled the market data.¹³¹ He reiterated that he did not rely upon the bulk sales because they were not arm's length transactions.¹³²

Staff witness Mr. Forrester took issue with Respondent's indication in the Edgewood appraisal report that the area was stable. He noted that Respondent admitted in his written response to the Board that the builder wanted out of the area and discounted the properties like "a fire sale."¹³³ He also noted that the area contained vacant lots.¹³⁴

ALJ Analysis. The ALJ finds that Respondent failed to fully explain in his appraisal report how the values in the area were stable given that a number of properties near the Edgewood property had sold for less in bulk sales. The ALJ agrees with Respondent that the bulk sales should have been discounted; however, the appraisal report should have noted the sales, and Respondent should have explained his rationale for excluding such sales.

4. Additional Alleged Violations

a. Site Description

Staff also alleged in its Statement of Charges that Respondent failed to identify and report the Edgewood site description in violation of USPAP Standards 1-2(e)(i) and 2-2(b)(iii). Respondent did not identify that the Edgewood property adjoined a middle school (the backyard overlooked the school running track). Mr. Forrester testified that this could have a positive or

¹³⁰ Tr. at 149.

¹³¹ Tr. at 150-151. In fact, although Respondent admitted that he should have more "fully explained" the prior sales data, he did not list the prior sales at all in his appraisal report. *See* Tr. at 150, 152-153.

¹³² Tr. at 175-176.

¹³³ Tr. at 303.

¹³⁴ Tr. at 304; Respondent Ex. 1 at 2-3.

negative affect on a property, and Respondent should have disclosed it and checked to see if any other comparable properties were similarly situated.¹³⁵

ALJ Analysis. The ALJ finds that Respondent violated USPAP because he did not mention this feature in his appraisal report. However, there was no showing that this materially affected the overall Edgewood property value determination.

b. Zoning Classification

Mr. Forrester noted that Respondent misreported the zoning classification. However, Mr. Forrester agreed that many appraisers incorrectly report zoning.¹³⁶

ALJ Analysis. The ALJ concurs that Respondent incorrectly reported the zone, in violation of USPAP Standard 1-2(e)(iv). Staff did not put forth evidence that this error affected Respondent's value determination.

c. Highest and Best Use

USPAP Standard 1-3(b) requires that when the value opinion to be developed is market value, an appraiser must develop an opinion of the highest and best use of the property. USPAP Standard 2-2(b)(ix) requires that, when reporting an opinion of market value, an appraisal report must summarize the support and rationale for the appraiser's opinion of the highest and best use of the property. Mr. Forrester pointed out that Respondent indicated that the highest and best use was the "present use" but failed to provide support for that determination.

ALJ Analysis. The evidence indicates that Respondent failed to provide support for his highest and best use determination in violation of USPAP Standards 1-3(b) and 2-2(b)(ix). Staff did not put forth evidence that this error affected Respondent's value determination.

¹³⁵ Tr. at 466-467; Staff Ex. 9 at 904.

¹³⁶ Staff Ex. 9 at 904; Tr. at 428.

C. USPAP Ethics Rules

1. Workfile Requirements

The USPAP Ethics Rule pertaining to record keeping requires an appraiser to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions.¹³⁷ Staff notes that the very definition of the word "workfile" in USPAP is "documentation necessary to support an appraiser's analysis, opinions, and conclusions."¹³⁸ Staff alleges Respondent failed to maintain a required workfile in all three of his appraisals containing all data, information, and documentation necessary to support his opinions. Mr. Forrester testified that an appraiser is required to keep true copies of any written reports or any type of media that support any analysis and conclusions. These documents must be kept in the workfile or an appraiser can reference where the documents are located (such as the study bookshelf).¹³⁹

Ms. Jacob testified that the USPAP workfile should include the appraisal report itself and whatever the appraiser communicated and concluded; proof must actually be contained in the workfile or the proof must be noted in the workfile. A reviewer should be able to follow behind the appraiser and do what the appraiser did. She further explained that the actual paperwork or copies of the data source do not need to be in the workfile, but the workfile must reference the data source (such as the MLS, Marshall & Swift, tax records). Such a reference should be specific enough that a reviewer could go to that source and get the same information.¹⁴⁰

Staff argues that merely citing to an MLS database or a subscription service that an appraiser does not own or have copies of is insufficient. Mr. Forrester testified that an appraiser could conduct research, print everything on an electronic file, and upload the printed document

¹³⁷ Tr. at 209.

¹³⁸ Staff Ex. 3 at 40.

¹³⁹ Tr. at 358.

¹⁴⁰ Tr. at 643, 646-648.

to a CD, but Respondent did not do this. Mr. Forrester indicated that failing to store the documents shifts the burden of the workfile requirement to a third party that does not have the duty to maintain the information.¹⁴¹ For instance, Mr. Forrester stated that he could not determine from Respondent's Brownstone property workfile how Respondent determined a \$60,000 lot value.¹⁴²

ALJ Analysis. The evidence supports a finding that Respondent failed to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions for all three appraisals. This is a USPAP Ethics Rule violation. For instance, if Respondent had the MLS searches documented, he could have supported his testimony that he did not conduct a search by price. He could have supported his construction costs and lot values. Both expert witnesses, Ms. Jacob and Mr. Forrester, explained that maintaining workfiles that allow another appraiser to follow each step of an appraisal is a fundamental part of an appraisal report.

2. Conduct

The USPAP Ethics Rule pertaining to conduct provides in relevant part:

- An appraiser must not communicate assignment results with the intent to mislead or to defraud.
- An appraiser must not use or communicate a misleading or fraudulent report.¹⁴³

Staff alleged that Respondent violated the conduct portion of the USPAP Ethics Rule by knowingly and intentionally communicating assignment results in a misleading and fraudulent manner with the intent to deceive and inflate the value in the appraisal report and reach a pre-

¹⁴¹ Tr. at 756-757.

¹⁴² Tr. at 758.

¹⁴³ Staff Ex. 3 at 42.

determined value. According to Staff, Respondent agreed that “if I say something that’s not true, that’s going to be misleading because it gives someone the wrong impression.”¹⁴⁴

Staff witness Mr. Forrester found that Respondent produced misleading appraisal reports, with numerous material misrepresentations and omission of material facts. He stated that Respondent deliberately and intentionally inflated the value of the properties to arrive at predetermined values.¹⁴⁵ Mr. Forrester noted that Respondent’s errors or mistakes all led to a higher property values; not one error resulted in lowering the appraised property’s overall value.¹⁴⁶

Mr. Forrester agreed that the legal definition of an appraisal reflects that it is an “opinion” of value. He further agreed that two reputable appraisers might use different appraisal amounts but the resulting appraisals should be within a 5% range.¹⁴⁷ When TDI referred the fraud case to the Board, TDI noted that for the 4004 Brownstone, another appraisal indicated a value of \$354,000 (Respondent appraised it at \$406,000). For the 4007 Brownstone unit, Respondent’s appraisal value was \$406,000; a “retro” appraisal value was \$305,000.¹⁴⁸ Respondent, noting these different appraisal amounts, takes issue with Mr. Forrester’s opinion that two reputable appraisers would issue appraisal reports within a 5% range.

ALJ Analysis. This is the main issue in the case: whether Respondent communicated assignment results in a misleading or fraudulent manner. The totality of the evidence, particularly Respondent’s demeanor, supports a finding that the mistakes Respondent made, while very serious, were not purposely done to support the fraudulent schemes that resulted from these appraisals. The ALJ disagrees with Staff that the three appraisal reports “epitomize

¹⁴⁴ Tr. at 30. This was Staff’s question to Respondent, who replied, “I would believe so, yes.” Tr. at 30.

¹⁴⁵ Tr. at 205.

¹⁴⁶ Tr. at 205, 319.

¹⁴⁷ Tr. at 338-340.

¹⁴⁸ Staff Ex. 4 at 420; Staff Ex. 4 at 282.

intentional and knowing bad acts done for the purpose of inducing others to rely on hollow representations.”¹⁴⁹ Respondent’s testimony led the ALJ to conclude that he was careless and overly influenced by information provided to him by the builders and brokers, such as signed contracts for a Brownstone unit. He failed to reconcile information that was contradictory. He failed to find pertinent information, or if he did, he failed to maintain such information in his workfiles. Rather than being purposely misleading, the ALJ found that Respondent, despite his years of experience, produced appraisal reports that contained serious errors and inflated results.

Although Ms. Jacob did not conduct an investigation, the ALJ found Ms. Jacob’s opinion to be very persuasive. Ms. Jacob listened to all the testimony at the hearing and agreed that Respondent likely violated USPAP on several occasions. But she would not agree with Staff that Respondent intentionally mislead his clients. She agreed that Respondent did not properly develop his appraisal reports. However, she would not opine—based on the testimony she heard—that Respondent intentionally misled in his appraisal reports. Stated differently, Ms. Jacob did not agree that Respondent performed an analysis and then changed it in order to intentionally mislead. The ALJ finds there is a large difference between serious mistakes that resulted in inflated values versus *intent* to mislead or commit fraud. Staff does not acknowledge this distinction. Staff’s contention is that Respondent purposefully inflated property value with an intent to mislead or commit fraud. While the ALJ agrees with Staff that Respondent’s errors were significant and resulted in inflated values, the evidence does not support a finding that Respondent *intentionally* misrepresented material facts. Rather, Respondent failed to verify information supplied to him by his clients; failed to use due care in selecting comparables (or in explaining his choice of comparables); failed to fully disclose and analyze the neighborhoods or market area trends; failed to correctly list the properties’ sales histories, and committed smaller errors that did not likely change the determination of values for the properties. But Respondent’s testimony that he did not know that the appraisal reports were going to be used in fraud was convincing, whereas Staff’s allegation that Respondent committed knowing bad acts was

¹⁴⁹ Staff initial brief at 45.

unsupported.¹⁵⁰ The evidence supports a finding that Respondent failed to properly conduct appraisals but not a finding that he intended to communicate in a misleading manner.

Finally, the Board's Penalty Matrix sets out a range of recommended action based on whether the violations were done willfully or in a grossly negligent manner. The evidence supports a finding that Respondent was negligent through his submission of appraisal reports that exhibited a lack of due care in his failure to fully explain his thought processes, to list previous sale history, and to maintain proper workfiles. The sum total of all the errors Respondent committed in these appraisals leads the ALJ to conclude that Respondent was careless to the level of being grossly negligent.

D. Board Rules

The Board may suspend or revoke a license, certification, authorization, or registration or deny issuing a license, certification, authorization, or registration to any applicant at any time when it has determined that the person applying for or holding the license, certification, or registration has made a material misrepresentation or omission of material fact.¹⁵¹

The evidence supports a finding that Respondent, through a number of errors, made material misrepresentations and omitted material facts. Respondent failed to disclose, analyze, and reconcile the listing history of both the Brownstone units and the Edgewood property. Respondent selected superior properties as comparables to the Brownstone units. Respondent failed to explain and verify his comparable properties to the Edgewood property. For the Brownstone units, Respondent incorrectly used price to conduct a search for comparables. Respondent failed to disclose and analyze the neighborhood and market area trends for both the

¹⁵⁰ Staff argues that Respondent exhibited selective knowledge of certain facts, which should weigh against his credibility. Again, the ALJ found Respondent to be a generally credible witness and attributed his certainty (and uncertainty) with some issues to be based on both his preparation for the hearing with his attorney and the fact that the events occurred five years ago.

¹⁵¹ 22 Tex. Admin. Code § 153.20(a)(9), now 22 Tex. Admin. Code § 153.20(a)(12).

Brownstone units and the Edgewood property. These errors resulted in material misrepresentations.

E. Sanction Recommendation

The Board may suspend or revoke a certification if a person fails to comply with USPAP.¹⁵² The Board has adopted a penalty matrix which bases the severity of the penalty imposed on the history of similar violations and the seriousness of the violation.¹⁵³ The least onerous penalties are recommended if the violations do not constitute evidence of a serious inability or unwillingness to comply with the legal standards; more onerous penalties are recommended if the violations demonstrate a serious but remedial deficiency; and the most onerous penalties are recommended if the violations were done willfully or in a grossly negligent manner. For a first occurrence of violations of the Act, Board rules, or USPAP, revocation is recommended only for violations that demonstrate willfulness or gross negligence.

In addition to the guidelines outlined in the matrix, Staff may recommend any or all of the following:

- (i) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;
- (ii) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;
- (iii) requiring additional reporting requirements; and
- (iv) such other recommendations, with documented support, as will achieve the purposes of the Act (Code ch. 1103) , the Rules (22 Texas Administrative Code ch. 153, 154, and 155), and/or USPAP.¹⁵⁴

¹⁵² 22 Tex. Admin. Code § 153.20(a)(3), renumbered effective December 27, 2010, as § 153.20(a)(6).

¹⁵³ 22 Tex. Admin. Code § 153.24(9).

¹⁵⁴ 22 Tex. Admin. Code § 153.24(9)(B).

The ALJ has found the following USPAP violations:

Brownstone Units	
USPAP 1-5(a)	Respondent failed to analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal
USPAP 1-6(a) and (b)	Respondent failed to reconcile and analyze the quality and quantity of data available
USPAP 1-1(a)	Respondent failed to correctly employ recognized methods and techniques necessary to produce a credible appraisal
USPAP 1-1(b)	Respondent omitted sales history, which significantly affected the appraisal. Respondent committed a substantial error of omission or commission that significantly altered his appraisal
USPAP 1-1(c)	Respondent performed his appraisals in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results, in the aggregate affected the credibility of those results
USPAP 1-4(a)	Respondent did not analyze comparable sales data
USPAP 1-4(b)(i-iii)	Respondent did not properly analyze comparable cost data when using the cost approach
USPAP 1-3(a)	Respondent did not identify and analyze the market area trends
USPAP 1-2(e)(i) and 2-2(b)(iii)	Respondent did not adequately identify and report the site description
USPAP 1-2(e)(iv)	Respondent did not properly identify the zoning classification
USPAP 1-3(b)	Respondent did not provide support for his highest and best use determination
USPAP Ethics Rule	Respondent failed to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions
Edgewood Property	
USPAP 1-5(b)	Respondent did not analyze all sales of the subject property that occurred within the three years before the appraisal effective date
USPAP 2-2(b)(viii)	Respondent failed to support the opinion of site value or reference the workfile
USPAP 1-6(a) and (b)	Respondent did not reconcile and analyze the quality and quantity of data available, namely the bulk sales of area properties
USPAP 1-1(a)	Respondent failed to correctly employ recognized methods and

	techniques necessary to produce a credible appraisal
USPAP 1-1(b)	Respondent committed a substantial error of omission or commission that significantly altered his appraisal
USPAP 1-1(c)	Respondent performed his appraisals in a careless or negligent manner, such as making a series of errors that, although individually might not significantly affect the results, in the aggregate affected the credibility of those results
USPAP 1-4(a)	Respondent did not analyze comparable sales data
USPAP 1-3(a)	Respondent did not identify and analyze the market area trends
USPAP 1-2(e)(i) and 2-2(b)(iii)	Respondent did not adequately identify and report the site description
USPAP 1-2(e)(iv)	Respondent did not properly identify the zoning classification
USPAP 1-3(b)	Respondent did not provide support for his highest and best use determination.
USPAP Ethics Rule	Respondent failed to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions

The ALJ did not find that Respondent violated USPAP 2-1(a) by issuing a report in a misleading manner. There was no evidence that Respondent was misleading in his reports. Rather, Respondent performed his appraisals in a careless manner, and the errors in his reports were consistent (such as his failure to note the Brownstone units' sales histories in multiple places on the reports). Respondent did not communicate the results of his analysis in a misleading or a fraudulent manner. Rather, his analysis contained significant errors leading to appraisal reports with inflated values. Similarly, for the Brownstone units, the ALJ did not find that Respondent violated USPAP 2-2(b)(viii), which requires the report to state the appraisal methods used, the value opinions and conclusions, and reference the workfile. Staff did not show that those appraisal reports were deficient. In other words, even though there were errors in the methods and techniques Respondent used, he referenced the methods in his reports.

Respondent has been appraising property for 27 years. He has been licensed for 21 years and has not had a previous complaint. He was paid from \$325 to \$375 for his appraisals.

Mr. Forrester admitted that he did not find any check or bribe connected with the fraud and Respondent.¹⁵⁵ Instead, Mr. Forrester believed that Respondent committed “fraud for free.”¹⁵⁶

Respondent testified that he did not intentionally inflate the value of the subject properties. He did not intentionally mislead or predetermine a value. He received the normal fee for his work, and he was not promised extra business. For the Brownstone units, Respondent was contacted by the broker, Hearn Capital, and the broker provided contracts, contact information, buyers’ names, etc. Respondent testified that he received the assignment before he spoke with anyone and had completed the Brownstone appraisals before the broker gave him the contract, which was signed on November 4, 2007, after the appraisal report date of November 2, 2007.¹⁵⁷

Respondent testified that the same sequence occurred for the Edgewood appraisal: he was contacted by a broker, they sent him an order, and then he performed the appraisal.¹⁵⁸ Concerning the Edgewood property, Mr. Forrester testified that as many as 12 or 13 of the 16 properties listed on the builder’s list were involved in mortgage fraud that involved independent appraisers but involved only five separate buyers.¹⁵⁹ This evidence and Respondent’s testimony suggests that independent appraisers such as Respondent were unaware that the properties were going to be used in a fraudulent scheme. Nonetheless, the ALJ finds that Respondent’s failure to conduct his appraisals according to USPAP standards and Board rules allowed fraud to occur.

As noted above, the ALJ found that Respondent committed a number of violations. Respondent has been an appraiser a long time, therefore, his appraisal reports should have been more accurate and, more importantly, contained more analysis with support for his analysis in his

¹⁵⁵ However, another appraiser, Russell Easton, was receiving bribes. Although the ALJ in that case recommended revocation, the Board did not revoke Mr. Easton’s license. Tr. at 401-402.

¹⁵⁶ Tr. at 379.

¹⁵⁷ Tr. at 581-584.

¹⁵⁸ Tr. at 585.

¹⁵⁹ Tr. at 764-767.

workfiles. Further, the ALJ found that Respondent's gross negligence inflated the value in all three appraisals. For the Brownstone units, he relied on contracts with inflated values, which affected his analysis. Clearly, if Respondent is to continue to work as an appraiser, he needs education and mentoring.

Respondent testified that he learned a great deal about appraising as a result of this case. For instance, he has a different understanding of USPAP, the appraisal process, and which form to use for certain appraisals. He admitted that, although he has been doing appraisals for 27 years, he had misconceptions and problems. He agreed that he would change his practice if he performs appraisals in the future. Although he has taken on-line continuing education in the past, Respondent stated that he would not take any on-line courses again because in-person training was more likely to be of higher quality.¹⁶⁰

Finally, Respondent noted that the Board has often given a Notice of Warning for the same violations at issue in this case. The Board warned one appraiser to give special attention to: quantifying and supporting land value, replacement cost, and adjustments in the sales comparison approach; providing sufficient market information; presenting a report in a manner that is not misleading; committing errors of omission and commission in a manner that affects value; and preparing a report with care so as to avoid inflating the value.¹⁶¹ Similarly, the Board issued a Notice of Warning for complaints involving a failure to discuss and analyze a contract of sale on the subject, failing to provide support for opinions and conclusions, failing to support land value, failing to comply with USPAP record keeping, and failing to disclose and analyze factors affecting the comparable sales.¹⁶²

Although Staff seeks revocation of Respondent's certification and a \$5,000 administrative penalty, based on Respondent's testimony, Ms. Jacob's testimony, and the

¹⁶⁰ Tr. at 588-590.

¹⁶¹ Respondent Ex. 12 at 76, Board Notice of Warning dated May 29, 2012.

¹⁶² Respondent Ex. 12 at 77, 79, 81, 82.

evidence, the ALJ believes a lesser penalty is proper. The ALJ recommends an administrative penalty of \$5,000, and a one-year suspension of his license. Once Respondent's suspension is over, Respondent should be required to complete a four-hour day of mentorship each calendar quarter with a Board-approved mentor for the next seven quarters, and submission of a completed mentorship affidavit to the Board following completion of each mentorship session.

IV. FINDINGS OF FACT

1. Tom M. Curran (Respondent) currently holds and, during the times applicable to this case, held general real estate appraiser certification number TX-1321290-R issued by the Texas Appraiser Licensing and Certification Board (Board).
2. On August 13, 2012, staff of the Board (Staff) sent an Original Statement of Charges to Respondent proposing revocation of the certification referred to in Finding of Fact No. 1, and an administrative penalty.
3. On September 27, 2012, Staff sent a notice of hearing to Respondent.
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.
5. Administrative Law Judge Lilo D. Pomerleau convened the hearing on the merits on October 30 through November 1, 2012, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas. Staff appeared through attorney Troy Beaulieu. Respondent was represented by attorney Ted Whitmer. After the taking of evidence and written argument, the record closed on January 4, 2013, with the filing of briefs.
6. Respondent has practiced as an appraiser since 1985, primarily in the Dallas, Texas area.
7. Respondent has been licensed since June 18, 1991, and has had no previous disciplinary proceedings with the Board.
8. Market value is a type of value, stated as an opinion, which presumes the transfer of property as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser in an appraisal.

9. Appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches. Respondent used the sales comparison approach and the cost approach in his appraisals at issue.
10. Under the sales comparison approach, the appraiser analyzes recent sales of property for characteristics such as improvement size (square footage), lot size, quality of construction, and location, thereby seeking to find the sale of the property that is most similar, *i.e.*, most comparable, to the property being appraised.
11. Under the cost approach, an appraiser considers the cost of the land, plus the cost of constructing or reconstructing the improvements, less depreciation.
12. The purpose of all three appraisals was for a mortgage finance transaction in which the lender, who was Respondent's client, was seeking to determine the value of the property so the lender/client could make a lending decision.

Respondent's Appraisals of the Brownstone Properties

13. Respondent issued an appraisal report for a property at 4007 Brownstone Court, Dallas, Texas on November 5, 2007, effective November 2, 2007. He also issued an appraisal report for a property at 4004 Brownstone Court, Dallas, on November 26, 2007, with an effective date of October 25, 2007 (together, the Brownstone units).
14. The Brownstone units consisted of newly constructed townhomes with a 2,500 square foot living area, in an area located south of Lemon Avenue, east of Interstate Highway (IH) 35, west of Beacon Street, and north of IH 30, in Dallas.
15. Respondent appraised both Brownstone units at \$406,000, using the sales comparison approach.
16. Respondent also appraised both Brownstone units at \$411,024 using the cost approach, but gave more weight to the sales comparison approach.
17. For the 4004 Brownstone unit, Respondent issued an appraisal report that stated there was no prior sales information currently available. However, this unit was listed for sale at \$395,000 as of June 18, 2007, then was listed for sale at \$339,000, but it did not sell after 92 days on the market.
18. Similarly, for the 4007 Brownstone unit, Respondent issued an appraisal report that stated there was no prior sales information currently available. However, this unit was listed in the Multiple Listing Service (MLS) archive on June 19, 2007, at \$395,000 but it was reduced to \$380,000, then to \$339,000, and finally to \$299,000.

19. Respondent was provided with contracts showing sales of 4002 Brownstone Court and 4006 Brownstone Court, Dallas, Texas, at \$404,000. Respondent allowed these contracts to influence his value appraisal of the Brownstone units.
20. The 4007 Brownstone unit also had a sales contract for \$404,000 when Respondent appraised the unit.
21. Respondent was required to disclose the listing history, reconcile the data (such as the sales contract for other Brownstone units), and explain the basis for his appraisals of the Brownstone units, but he failed to do so.
22. When Respondent issued appraisal reports for both Brownstone units, the properties had already been built with a number of amenities.
23. In order to perform an appraisal using the sales comparison approach, an appraiser must look at comparable sales.
24. Respondent used the same comparable sales for both Brownstone units.
25. Respondent used a comparable with a Z listing, which means the price is not verifiable without an appraiser taking extra steps to verify the sales price. Respondent did not verify the Z listing.
26. Respondent's comparables did not represent the most recent, proximate, and physically similar sales to the subject property. For instance, for one comparable, Respondent used a condominium with superior construction, not a townhome with similar construction materials. Respondent also used another comparable with a view superior to the Brownstone views.
27. Respondent used MLS to search for price in order to find comparable properties.
28. Conducting a search by price allows an appraiser to aim for a specific price. A correct way to search for comparable properties is to use gross living area, age, and/or location as search criteria.
29. Appraisal reports should include a summary of an appraiser's reasoning and analysis.
30. For the Brownstone units, Respondent indicated in his appraisal reports that: "[t]he area consists of average to luxury quality dwellings which appear to be receiving above average maintenance and upkeep." However, the immediate area also included some run-down properties, which Respondent did not disclose in his analysis. Respondent should have fully explained the area and his rationale in his appraisal reports.

31. A cost approach analysis is applicable to new construction such as the Brownstone units because a purchaser will not want to pay more for a property than it would cost to hire a builder and construct the unit.
32. For determining cost of construction for improvements to the property, an appraiser performs a segregated cost analysis by consulting a recognized source such as Marshall & Swift, a valuation service.
33. Respondent did not have any support for his cost of construction calculations in his workfile. There was insufficient evidence that Respondent's cost of construction calculations affected the appraisal values for the Brownstone units.
34. Respondent did not present convincing evidence supporting his lot values. There was insufficient evidence that the lot values Respondent used in his appraisal reports significantly affected the value of the Brownstone units.
35. Respondent inaccurately reported the size of the entire tract on which the Brownstone units are located. There was insufficient evidence that the inaccurate tract size significantly affected the value of the Brownstone units.
36. Respondent failed to report the Brownstone units' correct zoning classification. There was insufficient evidence that the incorrect zoning classification significantly affected the value of the Brownstone units.
37. Respondent failed to provide support for his highest and best use determination. There was insufficient evidence that this lack of support affected the value of the Brownstone units.

Respondent's Appraisal of the Edgewood Property

38. Respondent issued a summary appraisal report for 809 Edgewood Drive, Desoto, Texas, (the Edgewood property) on August 1, 2007, with an effective date of June 26, 2007. Respondent appraised this property at \$255,000.
39. The Edgewood property, a newly constructed home at the time of the appraisal, is in a single-family residential subdivision.
40. The builder, D.R. Horton, sold the Edgewood property to TLH & Associates; however, Respondent's appraisal report indicated that there were no prior sales or transfers of the subject property. Respondent failed to note the Edgewood property's sales history in numerous places on his report.
41. Respondent's workfile contains an inventory/sales sheet from the builder, D.R. Horton. The inventory/sales sheet is a list of 16 homes, one of which is at 809 Edgewood Drive,

with a builder's price of \$218,295, an offer price of \$179,635, and an estimated value of \$238,050.

42. Of the 16 properties listed on the inventory/sales sheet, 12 to 13 properties were used in fraudulent schemes. The Edgewood property was also listed on the inventory/sales sheet.
43. Because the properties were sold in bulk, a reasonable appraiser may have discounted such sales prices. However, if Respondent was treating the properties on the inventory/sales sheet as bulk sales and discounting them, he should have clearly explained in the Edgewood property appraisal report that he was doing so and why.
44. Respondent used two comparable properties that were located in Cedar Hill, Texas, not DeSoto, without explaining the rationale for his selection of properties outside the Edgewood area.
45. Respondent used non-verifiable sales for all three of his comparables for the Edgewood property. Non-verifiable builder sales should be verified by examining closing statements, talking with the closing coordinators, or contacting the buyers.
46. Fannie Mae's supplemental standards in 2007 contained guidelines that recommended an appraiser use only verifiable sales. It is not a USPAP violation to use builder sales of properties as comparable properties.
47. In his appraisal report, Respondent indicated that: "[v]alues in the area should continue to remain stable within the foreseeable future. Supply and demand is felt to be in balance which indicates a stable market." However, Respondent did not reconcile his opinion with the evidence of recent bulk sales in the area.
48. Respondent did not identify in his appraisal report that the Edgewood property adjoined a middle school. There was insufficient evidence that this lack of identification affected the value of the property.
49. Respondent failed to report the Edgewood property's correct zoning classification. There was insufficient evidence that this incorrect zoning classification affected the value of the property.
50. Respondent failed to provide support for his highest and best use determination. There was insufficient evidence that this lack of support affected the value of the Edgewood property.

Findings Common to All Appraisals

51. Although Respondent did not intentionally inflate his value opinion of the three properties at issue, his USPAP errors were careless and resulted in inflated values.

52. The mistakes Respondent made and the USPAP errors, while very serious, were not purposely done to support the fraudulent schemes that resulted from these appraisals
53. The evidence established that Respondent's conduct represents a serious inability to comply with the standards.
54. An appraiser is required to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions.
55. Respondent failed to maintain a workfile with all the data information and documentation necessary to support the appraiser's analysis and conclusions in all three appraisal reports.
56. Respondent, through a number of errors, made material errors and omitted material facts in all three appraisal reports.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act. Tex. Occ. Code (Act) ch. 1103.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code chs. 2001 and 2003.
3. Respondent received adequate and timely notice of the hearing. Tex. Gov't Code §§ 2001.051 and 2001.052.
4. Staff had the burden of proof on its allegations. 1 Tex. Admin. Code § 155.427.
5. Appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) developed and published by the Appraisal Foundation and in effect at the time the appraisal is performed. Act § 1103.405 and 22 Tex. Admin. Code § 155.1(a).
6. Based on the above Findings of Fact, Respondent violated the following USPAP Standards in effect in 2006-2007: the Ethics Rule regarding recordkeeping and USPAP Standards 1-1(a)-(c), 1-2(e)(i)and(iv), 1-3(a) and (b), 1-4(a) and (b)(i-iii), 1-5(a) and (b), 1-6(a) and (b), 2-2(b)(iii) and (viii).
7. By making omissions of material facts in his appraisals, Respondent violated 22 Texas Administrative Code § 153.20(a)(9) (this rule was renumbered without substantive changes effective December 27, 2012, and is now located at 22 Texas Administrative Code § 153.20(a)(12)).

8. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Act § 1103.518(2)(B) and 22 Tex. Admin. Code § 155.20(a)(3).
9. Based on the foregoing Findings of Fact and Conclusions of Law, and the Board's penalty matrix, the Board should assess an administrative penalty of \$5,000, and suspend Respondent's license for one year. At the end of this suspension period, Respondent should be required to take undertake a mentorship. 22 Tex. Admin. Code § 153.24(9).

VI. RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the ALJ recommends an administrative penalty of \$5,000, suspension of Respondent's license for one year, and, upon reactivation of his license, one four-hour day of mentorship each calendar quarter with a Board-approved mentor for the next seven quarters, and submission of a completed mentorship affidavit to the Board following completion of each mentorship session.

Signed March 4, 2013.



LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

